

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 109 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

JUSAB HASMABHAI  
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Appearance:

MR BD DESAI, AGP for Appellants  
MR MD RANA for Respondent No. 1  
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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 01/12/2000

ORAL JUDGEMENT

1. This Appeal has been preferred by the appellant being aggrieved by the judgment and decree passed by the learned Third Extra Assistant Judge, Rajkot, in Civil Appeal No. 288 of 1981, whereby the Third Extra

Assistant Judge, Rajkot, set aside the judgment and decree passed by the learned Second Joint Civil Judge, Rajkot, in Civil Suit No. 447 of 1980 by which the suit of the plaintiff came to be dismissed.

2. Present respondent was original plaintiff in Civil Suit No. 447 of 1980. He filed Civil Suit for declaration to the effect that the plaintiff continues in service of the defendants and for the declaration that Notice dated 10th June 1980 of defendant No.2 and subsequent office order which is placed on record at Exh.44 and is dated 8th July, 1980 are illegal, against the principle of natural justice, unconstitutional, null and void and not tenable at law.

3. The fact of the case is that the present respondent original plaintiff joined service as Armed Police Constable on 7th July, 1978 on temporary basis and for the probation for two years without any kind of inquiry, according to the plaintiff, he received a show cause notice for termination of his employment from defendant No.2 and by this Notice after 30 days, the employment of the plaintiff was to be terminated. After the Notice, the Plaintiff was also received an Office Order which is placed at Exh. 44 on 8th July 1980 relieving the plaintiff from his employment and Exh. 44 says that the plaintiff was relieved from his service because his services were not required. Plaintiff challenged the said notice and order Exh. 44 on various grounds. The main ground was the order was in violation of Articles 14 and 16 of the Constitution of India and was arbitrary, hostile and was based on complaint received from anonymous person and from one Jamadar and the service came to be terminated without holding any departmental inquiry or giving any opportunity of being heard to the plaintiff. The plaintiff further urged therefore the action of the defendants was in violation of Article 311(3) of the Constitution of India.

3. Defendants present appellants by filing the written statement, took a stand that the plaintiff was appointed on probation with condition that his service was likely to be terminated at anytime without any notice. It was admitted in the written statement that the plaintiff committed serious breach of duties while on guard from 10th July, 1979 to 12th July, 1979. It was also admitted that the plaintiff ganged with other Police Constables who insulted Guard Commandant and therefore inquiry was held and the probation of the plaintiff was extended. During this, he was involved in another

serious misconduct and he developed illicit relation with one unmarried girl who became pregnant, and the conduct of the plaintiff therefore according to defendants were found completely unsatisfactory. It is further contended that it was considered needless to cause embarrassment to her by dragging her into departmental proceedings as a witness when purpose could be served by discharging the Police Constable i.e. plaintiff, who was on probation under Rule 90(2) of Gujarat Police Manual Vo.I. It is the case of the defendants that the plaintiff was not found fit for confirmation and therefore the order of discharge was passed. Defendants further contended that the plaintiff was found to be unbecoming of a Policeman due to his conduct and his probation was extended and thereafter he was discharged from service on probation. It was further contended that the said order of discharge was not based on certain complaints but an order of discharge was a simpliciter and not result of the inquiry.

4. After framing of the issues, learned trial judge came to the conclusion that the order impugned was legal, correct and was not against the principles of natural justice and that the plaintiff was not entitled to declaration as prayed for. Since the suit was filed with the permission of the court, the contention of the defendant that the suit was based for want of Notice u/s 80 of C.P.C. was negatived by the trial judge. The trial judge ultimately dismissed the suit of the plaintiff and being aggrieved, the plaintiff filed Civil Regular Appeal No. 288 of 1981 in the Court of District Judge, Rajkot and vide his judgment and order dated 20th November, 1984, learned Third Extra Assistant Judge reversed the findings of the trial court and declared that the notice impugned and the order impugned at Exh. 44 were illegal, against the principle of natural justice, unconstitutional, null and void, ineffective and not tenable in law. Appellate Judge further declared that the plaintiff continues in service of the defendant No.1 as if the order Exh. 44 was not passed and/or entitled to consequential relief with back wages. Appellate Judge further ordered that the defendants were at liberty to hold departmental inquiry against the plaintiff for alleged misconduct regarding illicit relation with unmarried girl.

6. Being aggrieved by the above said order, the original defendants has filed this Second Appeal.

7. Learned Asst. Government Pleader Mr. B.D. Desai, on behalf of the appellant was heard while none

is present on behalf of the respondents. While admitting the Appeal, the following substantial questions of law was framed by this court.

" Whether termination of services of a probationer on the ground of his unsuitability is penal and requires principles of natural justice to be followed"?

8. The established law is even during probation if the services of an employee of the Government is terminated on alleged misconduct and which is stigmatic then the employer Government is bound to follow the principle of natural justice as envisaged by Article 311 (2) of the Constitution of India. It is further the settled law that the order of terminating the employment may be simpliciter ex facie but the same may be a camouflage for an order of dismissal for the misconduct and in such circumstances it is always open to the court before it the order is challenged to go behind the order and to ascertain the substances behind the termination of an employee. While doing this exercise, the court must find out whether the order is stigmatic or penal in nature. If it is so, the next question is whether the same is in violation of Article 311(2) of the Constitution of India.

9. Learned AGP Mr. Desai has vehemently argued that at the first instance, order is simpliciter. The plaintiff was on probation, which was extended and during probation, his services were innocuously terminated. Mr. Desai further vehemently urged that if any inquiry was required, then, as per the say of the defendant in written statement filed, the matter was being inquired regarding misconduct of the employee with the Commandant Guard, and during this inquiry, he committed other grave misconduct to indulge himself with an unmarried girl to the extent that the girl was pregnant. Since it was unnecessary to drag the said girl in a departmental proceedings and since the plaintiff was on probation, the order of termination simpliciter is passed which is sustainable in law.

10. The arguments advanced on behalf of the State appellant cannot be accepted for the simple reason that as aforesaid the established law in this country is when a stigmatic or penal order of dismissal is passed against an employee concerned, he may be in probation, then principle of natural justice must be followed. The order

may be ex facie innocuous and simpliciter, but the courts are empowered to go behind the order and find out whether the simpliciter order is a camouflaged of dismissal or not. No party in this case has led evidence and the case rests on its documents evidence only. From the written statement filed on behalf of the defendants it is clear admission of the defendants that the order of termination simpliciter was passed because of the misconduct of the plaintiff with Commandant Guard and second thing indulging himself with an unmarried girl as said above. It is clearly mentioned that instead of dragging the unmarried girl in a departmental proceedings, it was thought fit to pass the order to terminating the employment of the plaintiff simpliciter. Therefore, it is clear from the admission of the defendants that the order passed was not a simpliciter order but was based on misconduct and the first Appellate Judge on facts correctly found that the order was a stigmatic and penal. Then, the next question arose whether the regular departmental inquiry held against the plaintiff or not. Admittedly, no such inquiry was conducted or no opportunity to the plaintiff was awarded of being heard. The inquiry which Mr. Desai, learned AGP refers, is not an inquiry contemplated by Article 311(2) of the Constitution of India, by which the delinquent has right to participate in the inquiry and has constitutional right to make representation against the proposed action or an order of the authority passed against him on the ground of misconduct. Therefore, in this view of the matter, it clearly appears that the learned First Appellate Judge nowhere committed the error of law in passing the impugned order, which requires no interference at all.

11. In view of the above said discussion, this Appeal being meritless, is dismissed with no order as to costs.

(J.R. Vora, J.)

p.n.nair